NG TIOU HONG

v.

COLLECTOR OF LAND REVENUE, GOMBAK

FEDERAL COURT, KUALA LUMPUR
SALLEH ABAS CJ (MALAYA)
HASHIM YEOP SANI FJ
SYED AGIL BARAKBAH FJ
[CIVIL APPEAL NO. 37 OF 1983]
13 MARCH 1984

LAND LAW: *Land Acquisition - Appeal against decision of High Court - Reference of matter to High Court - Method of valuation - Whether satisfactory - Sub-division for purpose of valuation - Whether principle correct.*

The appeal was against the decision of the High Court, Kuala Lumpur, relating to the market value of 147 acres of land in Gombak, Selangor. The land was held by 14 co-proprietors. The co-proprietors of the land being dissatisfied with the Collector's award, reference of the matter had been made to the High Court under s. 38 Land Acquisition Act 1960 (the Act). The appeal was mainly against the method adopted by the trial Judge in arriving at the valuation of the scheduled land. He had sub-divided the land into portions and valued them separately, the north-west portion at RM30,000 per acre and the rest at RM15,000 per acre.

Held:

[1] The trial Judge erred in failing to apply the correct principle in determining the market value of the scheduled land. The Act does not provide for the method of valuation. The Courts, however, have adopted the principle of valuing the scheduled land as a whole, especially in cases where the area is large and is owned by numerous individuals in different portions.

[2] The scheduled land should be valued at about RM17,000 per acre. The big area of the land, its location and nature did not render it as easily marketable as the smaller lots in the neighbourhood. In the determination of the market value, the safest guide is evidence of similar lands of similar quality or position in the locality at or prior to the time of acquisition. The prices paid for such sales can be used as comparable, subject to allowances to be made depending on the circumstances. Principles to be applied, other than the principle that the land must be valued as a whole, include those of the willing vendor and willing purchaser and of the potentialities of the land.

[Appeal allowed. No order as to costs. Appellant entitled to costs in the High Court.]

Cases referred to:

Chuah Say Hai & Ors. v. Collector of Land Revenue, Kuala Lumpur [1967] 2 MLJ 99
Collector of Land Revenue v. Allagappa Chettiar [1971] 1 MLJ 43
Collector v. Ramchandra Harischandra [1926] AIR Bombay 44
Superintendent of Lands and Surveys, Sarawak v. Aik Hoe & Co. Ltd. [1966] 1 MLJ 243
Vyricherla Narayana Gajapatiraju v. The Revenue Divisional Officer, Vizagapatam [1939] AC 302
Nanyang Manufacturing Co. v. Collector of Land Revenue, Johore [1954] MLJ 69

Legislation referred to:

Land Acquisition Act 1960, ss. 3 to 7, 11(2), 22, 38

For the appellant - P.S. Gill
For the respondent - Abdul Malik bin Salleh; Legal Adviser Selangor

JUDGMENT

Syed Agil Barakbah FJ:

This is an appeal against the decision of the learned Judge given in the High Court, Kuala Lumpur on 24 January 1983 relating to the determination of the market value of a piece of land held under Certificate of Title No. 3727, Lot No. 2388, Mukim of Batu, District of Gombak, in the State of Selangor. This 147 acres of land is owned by 14 co-proprietors in undivided shares of which the appellant is the registered owner of 800/23670 shares. It was part of Sungai Tua Estate which had undergone fragmentation.

The Selangor State Government decided to acquire the whole of said land for the purpose of sub-dividing and distributing to the landowners who had been displaced due to the construction of a dam for a flood control scheme involving their lands at Batu. All the necessary requirements under ss. 3 to 7 of the Land Acquisition Act 1960 having been complied with, a declaration of intended acquisition under s. 8 was published in the State Government *Gazette* on 10 April 1980 (p. 43 of record). On 15 May 1980 a public notice of inquiry of the intended acquisition was issued by the Collector of Land Revenue, Gombak under s. 10 and on 15 May 1980 notices requiring statements in writing were issued under s. 11(2) of the Act (pp. 45 and 46 of record). The Collector held an enquiry under s. 12 on 13 September 1980 and completed it on 13 November 1980. He assessed the whole of the scheduled land in the sum of RM2,219,620 at RM15,000 per acre as compensation to be awarded to all the registered co-owners who were subsequently served with the required notice under s. 14 (pp. 51 and 52 of record). Notices were also issued under s. 22 to enable the Collector to take formal possession of the scheduled land. All the 14 co-proprietors being dissatisfied with the Collector's award which they accepted under protest filed a written application to the Collector requiring him to refer the matter to the High Court for determination by virtue of s. 38 (p. 7 to 9 of record).

The appellant's reference was heard by Wan Hamzah J with the aid of two assessors on 17 January 1983 and completed on 24 January 1983. The award by the learned Judge amounted to RM2,413,125 from which the appellant was entitled to RM81,600 being the value of his sool 23 & 70 shares and the value of the scheduled land worked out to RM16,311.78 cts. per acre.

The appellant being dissatisfied with the decision has now appealed to this Court. The decision of this Court was agreed upon to be binding on all the other co-proprietors who had earlier objected to the award.

There are ten grounds of appeal which are overlapping and inter-connected but the crux of the appeal relates to the method by which the trial Judge adopted in arriving at the valuation of the scheduled land. He accepted the valuation of RM30,000 per acre valued by the appellant's valuer and applied it to the north west portion of the scheduled land covering 12 acres 3 roods and 30 poles in area. For the rest of the 135 acres he accepted the valuation by the Collector's valuer at RM15,000 per acre. Having obtained the total sum of RM2,413,125 for the whole area, he then assessed the appellant's 800/23670 shares and awarded the sum of RM81,600 as compensation. In other words he sub-divided the scheduled land into two separate portions and valued them separately instead of valuing the land as a whole.

Under the Act there is no provision relating to the method of valuation. However the Courts have adopted the principle of valuing the scheduled land as a whole especially in cases where the area is large and owned by numerous individual owners in different portions. In *Chuah Say Hai & Ors. v. Collector of Land Revenue, Kuala Lumpur* [1967] 2 MLJ 99, Gill J's ruling in that case was later re-affirmed by their Lordships of the Privy Council in *Collector of Land Revenue v. Allagappa Chettiar* [1971] 1 MLJ 43, 46, which held that under the Land Acquisition Act, 1960 the scheduled lands are to be valued as a whole. The learned Judge in that case valued the whole of the 23 acres as a single unit even though the totality of the land acquired were held by the applicants in seven separate titles for areas varying between approximately 11 acres and just under half-acre. He was right in law in doing so.

In contrast is the Indian case of the *Collector v. Ramchandra Harischandra* [1926] AIR Bombay 44. The Judge in that case adopted a similar method as done in the present case. On appeal he was overruled on the ground that it was impossible to divide the whole of approximately 13 acres of land into separate portions and give one value to so much of the frontage land and divide again the interior land into separate portions and value them again at different rates. Of course, in the present case the learned Judge did not adopt the latter part since he did not sub-divide the interior part of the scheduled land into separate portions but only took the remainder as a whole and assessed lesser value than the north west portion. The real test by which the market value can be arrived at is to gather from the other sales what the whole land would be likely to realise in the market about the time of acquisition. It is clear therefore that the learned Judge erred in failing to apply the correct principle as a basis in determining the market value of the scheduled land.

There are of course other principles that have to be applied according to the facts and circumstances of a particular case along the lines provided by the First Schedule to the Act and as decided from time to time by the Courts. We consider the following as the main principles:

Firstly, market value means the compensation that must be determined by reference to the price which a willing vendor might reasonably expect to obtain from a willing purchaser. The elements of unwillingness or sentimental value on the part of the vendor to part with the land and the urgent necessity of the purchaser to buy have to be disregarded and cannot be made a basis for increasing the market value. It must be treated on the willingness of both the vendor to sell and the purchaser to buy at the market price without any element of compulsion. Secondly, the market price can be measured by a consideration of the prices of sales of similar lands in the neighbourhood or locality and of similar quality and positions. Thirdly, its potentialities must be taken into account. The nature of the land and the use to which it is being put at the time of acquisition have to be taken into account together with the likelihood to which it is reasonably capable of being put to use in the future e.g. the possibility of it being used for building or other developments. Fourthly, in considering the nature of the land regard must be given as to whether its locality is within on near a developed area, its distance to or from a town, availability of access road to and within it or presence of a road reserve indicating a likelihood of access to be constructed in the near future, expenses that would likely be incurred in levelling the surface and the like. Fifthly, estimates of value by experts are undoubtedly some evidence but too much weight should not be given unless it is supported by, or coincides with, other evidence. (*Superintendent of Lands and Surveys, Sarawak v. Aik Hoe & Co. Ltd.* [1966] 1 MLJ 243, *Vyricherla Narayana Gajapatiraju v. The Revenue Divisional Officer, Vizagapatam* [1939] AC 302, 312, and *Nanyang Manufacturing Co. v. Collector of Land Revenue, Johore* [1954] MLJ 69).

The safest guide is evidence of sales of similar lands of similar quality or position in the locality at or prior to the time of acquisition. The prices paid for such sales can be used as comparables subject to making allowance for all the circumstances.

In the present case four lots of land in the locality sold prior to the acquisition were considered and accepted by the learned Judge as comparables in determining the value of the scheduled land.

According to the appellant's valuer lots 1783 and 1784 were sold on 2 November 1979 at RM39,095 per acre. The total acreage is 6.096 acres. The lots were used as a poultry farm which was abandoned prior to the sale. There used to be temporary dwellings at that time. The lots are now vacant and overgrown with blukar. They are situated to the left of the scheduled land, are level and low lying with a stream running by. There is ready access to the main road. (See plan on p. 44 of record).

Lots 9515 and 9517 situated to the south of the scheduled land are hilly with no legal access. Lot 9515 is slightly more than 5 acres and was sold on 5 May 1980 at RM12,612 per acre. Subsequently on 6 December 1982 it was sold again at RM43,000 per acre i.e., about two and a half years after the date of acquisition and does not therefore reflect the value of the land at the time of acquisition. Lot 9517 is slightly more than 10 acres and was sold on 14 June 1978 at RM10,000 per acre.

In reviewing the evidence we do not consider that the four lots can be accepted as comparables with the scheduled land, lot 2388. They are too small in size as compared with 147 acres of Lot 2388. The physical nature of lot 2388 is of a hilly topography, part of it has been excavated off its top soil and part of it is covered with rubber and lush vegetation. There is no evidence that tapping was being done of the rubber to indicate any income derived from it.

Regarding the question as to whether there is any legal access to the land, we are satisfied that there is none. Access to it is by means of a foot bridge across the Batu River leading to lots 1783 and 1784 which are not state land. There is no provision for a road reserve but only for a river reserve. Similarly other access is through other people's lands. The road reserve between lots 1624 and 1636 does not come anywhere near the scheduled land. The evidence of the Collector of Land Revenue (PW2) is very clear on these points.

The other point that was raised by the appellant related to the allegation that the CLR who heard the inquiry made two different valuations viz. under "the Order" appearing on p. 49 of the record he accepted the valuation of the Government Valuer for the scheduled land at RM20,000 per acre but on p. 51 he valued the land at RM15,000 per acre which was the sum accepted without any objections being raised before the learned Judge. We cannot accept this argument as tenable. It is an inadvertent error since the total sum of RM2,219,620 recorded by the CLR in the next paragraph on p. 50 as compensation works out to about RM15,000 per acre. Nor can the sum stated be accepted as 75% of the actual amount of compensation as suggested because the order issued under s. 14 appearing on p. 15 of the record shows separate awards to each of the 14 registered owners involved in the enquiry as required by the section. The amount of compensation remains the same. The note appearing at the bottom merely states that 75% of the compensation is to be paid by virtue of s. 29A.

In conclusion we are of the view that the big area of the scheduled land, its location and nature do not render it easily marketable as with the smaller lots in the neighbourhood. In our considered judgment compensation in the sum of RM2,500,000 as the market value of the whole land valued as one unit, is reasonable and proper. That works out to slightly more than RM17,000 per acre. We order accordingly.

The judgment of the Court below is set aside. The appeal is allowed. The deposit is to be refunded to the appellant.

With regard to costs since there is only a slight increase in the award there should be no order but the appellant should be entitled to costs in the High Court.

Also found at [1984] 1 CLJ 350